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9
10 *Attorneys for Plaintiff*

11
12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 HANDS ON TRADE ASSOCIATION,
15 INC.,

16 No. 18-CV-0011

17 Plaintiff,

18 v.
19 COMPLAINT FOR DAMAGES
20 AND INJUNCTIVE RELIEF

21 BRIAN OAKS, an individual; and
22 WITHINMYSITE.COM, LLC, d/b/a
23 IWANTASPA, a Utah limited liability
24 company,

25 Defendants.

26 Plaintiff Hands On Trade Association, Inc., through undersigned counsel,
alleges as follows:

27 **I. PARTIES**

28 1.1. Plaintiff Hands On Trade Association, Inc. is a Washington
corporation with its principal place of business in Spokane, Washington.

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1 1.2. Defendant Brian Oaks is an individual residing in Highland, Utah.

2 1.3. Defendant WithinMySite.com, LLC, doing business as iWantaSpa, is
3 a Utah limited liability company with its principal place of business in Highland,
4 Utah.
5

6 **II. JURISDICTION AND VENUE**

7 2.1. Subject Matter Jurisdiction. The Court has subject matter jurisdiction
8 under 28 U.S.C. § 1332(a)(1) because Plaintiff and Defendants are citizens of
9 different states and the amount in controversy exceeds \$75,000.00.

10 2.2 Personal Jurisdiction. The Court has personal jurisdiction over
11 Defendants because Defendants have established systematic and continuous
12 contacts with the state of Washington. Personal jurisdiction is also properly
13 exercised because Defendants have purposefully directed their activities toward the
14 state of Washington and Plaintiff's claims arise from those activities.
15

16 2.3. Venue. Venue is proper under 28 U.S.C. § 1391(b)(2) because a
17 substantial portion of the events giving rise to Plaintiff's claims occurred in this
18 District.
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COMPLAINT FOR DAMAGES AND
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1 III. FACTS

2 3.1. Plaintiff is a trade association for cosmetologists, estheticians,
3 beauticians, massage therapists, and other professionals whose services focus on
4 the appearance and wellness of the human body.

5 3.2 Plaintiff offers a variety of products and services to its members.
6 These products and services include, among others, malpractice insurance and
7 general liability insurance. Plaintiff charges its members an annual membership
8 fee for these products and services.

9 3.3 Beginning in or about 2006, Plaintiff partnered with Defendants to
10 provide its members with the ability to build a custom website that would be
11 hosted by Defendants (the “Web Builder Service”). Plaintiff and Defendants
12 entered into a contract whereby Plaintiff acquired a license to the Web Builder
13 Service for each of its members for an annual per-member licensing fee.

14 3.4 In mid-2017, after the contract had expired, Defendants unilaterally
15 increased the licensing fee for the Web Builder Service.

16 3.5 Unwilling to pay the higher fee, Plaintiff terminated its relationship
17 with Defendants in or about September 2017.

18 3.6 Before parting ways, Plaintiff and Defendant made arrangements for
19 members who wished to continue using the Web Builder Service to do so at their
20

1 own expense. In particular, Plaintiff and Defendants agreed that, when it came
 2 time for a member to renew its membership with Plaintiff, the member would be
 3 given the option to license the Web Builder Service from Defendants directly for
 4 whatever fee Defendants wished to charge.
 5

6 3.7 In a letter formally terminating the relationship, Plaintiff informed
 7 Defendants that its membership list was proprietary and instructed Defendants not
 8 to contact its members for any purpose other than informing them of their option to
 9 continue using the Web Builder Service at their own expense.
 10

11 3.8 Beginning on a date unknown, but no later than January 1, 2018,
 12 Defendants began sending unsolicited and unauthorized emails to Plaintiff's
 13 members. The emails contain false and misleading statements about Plaintiff's
 14 business and encourage Plaintiff's members to join a competing trade association.
 15

16 3.9 One such email, attached hereto as **Exhibit A**, states:
 17

18 We've been receiving a lot of calls from members like you wondering
 19 what the heck is going on with the Hands On Trade Association
 20 (HOTA). They say HOTA is not answering the phones nor
 21 responding to e-mails and they can't log into our [Web Builder
 22 Service] account anymore. They're wondering if they're still in
 23 business anymore.

24 We have some of the same concerns because we can't reach them
 25 either. My company has provided the [Web Builder Service] to their
 26 members for more than 9 years and this new degradation of their
 business is very worrisome. I'm calling, e-mailing, and sending text
 messages and getting no reply[.]

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* * *

[Y]ou should know that once your current membership with HOTA expires, we will no longer be able to provide [the Web Builder Service] to you for free... but all hope is not lost. You can either pay for our services monthly or, even better, you can sign up with one of the other less expensive associations who offer the [Web Builder Service] as one of their many member benefits.

3.10 Another email, attached hereto as **Exhibit B**, states:

It appears as though Hands On Trade will NOT be renewing your membership benefits next year. That means you have about 30 days to decide how you like to move forward to keep the additional benefits you've had in the past (i.e. Website, Hosting, Custom App, Appointment Scheduler, Listing on iWantaSpa.com, etc.) up and running. The great news is that you have a great option available:

1. You can let us know of your interest to keep these benefits up and running and we can begin billing your credit card \$9.95 monthly upon your approval.

Please click here to renew.

2. Even better, you can switch your account over to any of the other less expensive organizations we've partnered with to provide you with our services along with other benefits as a part of their membership plans.

Please click here to proceed.

3.11 On information and belief, Defendants are sending emails like those
noted above to thousands of Plaintiff's members. The emails are timed to
roughly two (2) months before the recipients' memberships come up for
renewal.

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1 3.12 One of the less expensive “partner” associations referenced in
2 Defendants’ emails is Health & Bodywork Association. On information and
3 belief, Health and Bodywork Association is owned by Defendant Brian Oaks.
4

5 3.13 On information and belief, Health & Bodywork Association offers
6 insurance coverage as a benefit of membership. On information and belief, Health
7 & Bodywork Association offers precisely the same types of coverage that Plaintiff
8 provides its members.
9

10 3.14 On January 5, 2018, Plaintiff served Defendants with a cease and
11 desist letter demanding that Defendants refrain from making false and misleading
12 statements about Plaintiff’s business and tortiously interfering with Plaintiff’s
13 business relationships with its members. A copy of the cease and desist letter is
14 attached hereto as **Exhibit C**.
15

16 3.15 Despite having been served with Plaintiff’s cease and desist letter,
17 Defendants have continued to make false and misleading statements about
18 Plaintiff’s business and have continued to tortiously interfere with Plaintiff’s
19 business relationships with its members.
20

21 3.16 A significant number of Plaintiff’s members have either cancelled or
22 not renewed their memberships as a result of Defendants’ actions.
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1 3.17 Plaintiff will continue to lose members, at substantial injury to its
 2 business, if Defendants are not enjoined from contacting Plaintiff's members and
 3 making false and misleading statements.
 4

5 3.18 Plaintiff will also suffer irreversible reputational injury if Defendants
 6 are not enjoined from making false and misleading statements about Plaintiff's
 7 business.
 8

9 **IV. CAUSES OF ACTION**

10 **Claim 1 – Injunctive Relief**

11 4.1 Plaintiff incorporates and realleges each of the foregoing paragraphs
 12 as if fully set forth herein.

14 4.2 Plaintiff is likely to succeed on the merits of its claims.

15 4.3 Plaintiff will suffer irreparable harm in the form of lost business and
 16 irreversible reputational injury if Defendants are not enjoined from making false
 17 and misleading statements about Plaintiff's business and Plaintiff's willingness to
 18 renew its members' benefits.
 20

21 4.4 A balancing of the equities weighs in favor of granting injunctive
 22 relief. Defendants have made knowingly false and misleading statements about
 23 Plaintiff's business in an effort to divert business away from Plaintiff and to a
 24 competing business owned by Defendant Brian Oaks.
 25
 26

4.5 An injunction prohibiting Defendants from making false and misleading statements about Plaintiff's business is in the public interest. If Defendants are not enjoined from making such statements, Plaintiffs' members will be misled into thinking that Plaintiff is unwilling or unable to renew their memberships and the malpractice insurance and general liability insurance that is attendant thereto.

Claim 2 – Tortious Interference with Business Expectancy

4.6 Plaintiff incorporates and realleges each of the foregoing paragraphs as if fully set forth herein.

4.7 Plaintiff has valid contractual relationships and business expectancies with its members.

4.8 Defendants had knowledge of Plaintiff's contractual relationships and business expectancies with its members.

4.9 Defendants intentionally interfered with Plaintiff's contractual relationships and business expectancies with its members, causing Plaintiff's members to cancel or not renew their memberships.

4.10 Defendants acted with an improper purpose and using improper means.

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4.11 Plaintiff incurred damages as a direct and proximate result of Defendants' actions.

Claim 3 – Violation of Washington Consumer Protection Act

4.12 Plaintiff incorporates and realleges each of the foregoing paragraphs as if fully set forth herein.

4.13 Defendants committed one or more unfair or deceptive acts or practices occurring in trade or commerce by contacting Plaintiff's members and falsely informing them that Plaintiff's business is on the brink of failure and that Plaintiff would not be renewing their membership benefits.

4.14 Defendants' unfair and deceptive acts and practices affect the public interest.

4.15 Plaintiff was injured in its business or property as a direct and proximate result of Defendants' actions.

Claim 4 – Defamation

4.16 Plaintiff incorporates and realleges each of the foregoing paragraphs as if fully set forth herein.

4.17 Defendants have made one or more false and defamatory statements about Plaintiff to Plaintiff's members

4.18 Defendants' statements were not privileged

4.19 Plaintiff incurred damages as a direct and proximate result of Defendants' conduct.

V. JURY DEMAND

5.1 Plaintiff demands a trial by jury on all claims so triable.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. A temporary restraining order enjoining Defendants from making false and misleading statements about Plaintiff's business;

B. A preliminary injunction enjoining Defendants from making false and misleading statements about Plaintiff's business:

C. For judgment in Plaintiff's favor on all causes of action;

D. For an award of damages in an amount to be proven at trial;

E. For an award of treble damages pursuant to RCW 19.86.093;

F. For an award of attorneys' fees and costs as authorized by law;

F. For an award of attorneys' fees and costs as authorized by law;

G. For prejudgment and post-judgment interest as authorized by law

H. For such other relief as the Court deems just and equitable.

H. For such other relief as the Court deems just and equitable.

H. For such other relief as the Court deems just and equitable.

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**COMPLAINT FOR DAMAGES AND
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2 DATED this 10th day of January, 2018.
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6 WITHERSPOON BRAJCICH MCPHEE, PLLC
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8

9 By: s/ John T. Drake
10 James A. McPhee, WSBA #26323
11 John T. Drake, WSBA #44314
12 *Attorneys for Plaintiff*
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